

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
DAVID M. GLOVER, JUDGE

DIVISION III

CACR06-861

June 27, 2007

ANGELA SANDERS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

APPEAL FROM THE IZARD
COUNTY CIRCUIT COURT
[CR-2004-15]

HONORABLE TIMOTHY M.
WEAVER, JUDGE

AFFIRMED; MOTION GRANTED

Appellant, Angela Sanders, pleaded guilty in April 2005 to possession of a controlled substance, methamphetamine, and was placed on three years' probation. Conditions of Sanders's probation included that she not commit an offense punishable by imprisonment; that she not use, sell, distribute, or possess any controlled substance, except controlled substances pursuant to a legitimate prescription from a physician; and that she submit to random testing for the use of illegal substances at the discretion of any supervising officer.

The State filed a petition for revocation in July 2005, alleging that Sanders had violated her probation by admitting that she had used methamphetamine, by testing positive for methamphetamine, by failing to submit to random testing for the use of

controlled substances, and by failing to attend out-patient drug treatment. The petition was amended on March 31, 2006, to add the allegations that Sanders committed the crimes of interfering with governmental operations and criminal impersonation, and that she had used methamphetamine and marijuana on March 30, 2006. The petition was amended a second time in April 2006 to add the allegations that Sanders had used cocaine in April 2006 and had violated the Arkansas Hot Check Law.

A hearing on the revocation petition was held on May 4, 2006, at which time Sanders testified that she had used illegal drugs while on probation. She said that the last time she had used methamphetamine was in July 2005, but that her attorney told her that she had failed a drug test on March 30, 2006, at the Independence County Jail. Sanders also admitted that she had failed to take a drug test on one occasion.

Cathy Bristow, an employee of the IZard County Sheriff's Office, testified that she was familiar with Sanders and had drug tested her on occasion. Bristow stated that Sanders tested positive on August 26, 2005, for methamphetamine and marijuana, and that she tested positive for cocaine on April 10, 2006.

At the close of the hearing, the trial court found that Sanders had violated her probation and sentenced her to one year in a regional correction facility. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(j) of the Arkansas Rules of the Supreme Court and Court of Appeals, Sanders's counsel has filed a motion to withdraw on the grounds that the appeal is without merit. Counsel's motion was

accompanied by a brief referring to everything in the record that might arguably support an appeal, including a list of all rulings adverse to Sanders made by the trial court on all objections, motions and requests made by either party with an explanation as to why each adverse ruling is not a meritorious ground for reversal. The clerk of this court furnished Sanders with a copy of her counsel's brief and notified her of her right to file *pro se* points. Sanders has not filed any *pro se* points.

The only adverse ruling made at the revocation hearing was the trial court's decision to revoke Sanders's probation and sentence her to one year in a regional correction facility. In *Richardson v. State*, 85 Ark. App. 347, 350, 157 S.W.3d 536, 538 (2004) (citations omitted), this court again set forth its well-settled standard of review for cases involving probation revocation:

To revoke probation or a suspension, the trial court must find by a preponderance of the evidence that the defendant inexcusably violated a condition of that probation or suspension. The State bears the burden of proof, but need only prove that the defendant committed one violation of the conditions. When appealing a revocation, the appellant has the burden of showing that the trial court's findings are clearly against the preponderance of the evidence. Evidence that is insufficient for a criminal conviction may be sufficient for the revocation of probation or suspended sentence. Since the determination of a preponderance of the evidence turns on questions of credibility and the weight to be given testimony, we defer to the trial judge's superior position.

In this case, Sanders admitted that she had used illegal drugs during her probation. Additionally, Cathy Bristow testified that Sanders had tested positive for illegal drugs on two occasions during her probation. This evidence is sufficient to support the revocation of Sanders's probation.

From a review of the record and the brief presented to this court, Sanders's counsel has complied with the requirements of Rule 4-3(j) of the Arkansas Rules of the Supreme Court and the Court of Appeals. The revocation of Sanders's probation is affirmed, and counsel's motion to be relieved is granted.

HART and GRIFFEN, JJ., agree.